H-1B Visa Program

• The H-1B nonimmigrant classification is for aliens coming to the United States temporarily to perform services:
  – Specialty occupation
  – Department of Defense worker
  – Fashion model
Labor Condition Application (LCA)

• Each petition for an H-1B worker must be accompanied by an LCA in which the DOL certifies:
  – Paid at least the actual or prevailing wage
  – Working conditions will have no adverse effect on U.S. workers
  – No strike or lockout is in progress.
  – The employer has notified the bargaining representative if the job is unionized, or has posted a notice that an LCA was filed.
Numerical Cap

- Statutory numerical limitation of 65,000 per fiscal year except:
  - 20,000 U.S. master’s degree or higher
  - Institutions of higher education or related/affiliated nonprofit entities
  - Nonprofit research organizations or governmental research organizations
  - Petitions filed prior December 31, 2014 for work only in Guam or the Commonwealth of the Northern Marianas Islands
  - Petitions filed on behalf of current H-1B workers who have been counted previously against the cap
The filing period for Fiscal Year (FY) 2011 began on April 1, 2010.

As of May 6, 2010, USCIS had received approximately
- 18,000 cap-subject petitions
- 7,600 U.S. master’s petitions

In comparison, between April 1 and April 7, 2009 USCIS approximately
- 42,000 cap-subject petitions
- 20,000 U.S. master’s petitions
Recent Developments

• Guidance to the field was issued on January 8, 2010 regarding what factors constitute an “employer-employee” relationship in the H-1B context.

• Administrative Site Visit Verification Program (ASVVP)
Guidance to the Field

• Employer-Employee Memo on January 8, 2010
  – A valid employer-employee relationship must exist for the duration of the requested H-1B validity period.
  – The memo provided guidance to adjudicators on how to determine whether a valid employer-employee relationship will exist between the petitioner and beneficiary, especially in third party employment situations.
ASVVP

• Utilizes physical on-site inspections to determine
  – Existence of employment location
  – If a beneficiary according to the petition is
    • Employed at the location specified
    • Performing the duties as described
    • Paid the salary as indicated

• Initial findings
  – 13,748 H-1B site inspections as of March 26, 2010
  – Initial results indicate fraud and noncompliance rates of 12%